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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

SHAWN MICHAEL MARTIN,

Plaintiff,

v.

DR. DEWSNUP, GARTH GULICK M.D. (SRCI);
JANE DOE #3, (SRCI); JANE DOE #4, (SRCI);
JANE DOE #5, (SRCI); JOHN DOE #5, (SRCI);
JOHN DOE #7, (SRCI); JOHN DOE #8, (SRCI);
JOHN DOE #9, (SRCI); S. PALMER (SRCI),
MARK NOOTH (SRCI), MICHAEL S. PAYNE
(SRCI), TED RANDALL (OSP), DR. STEVE
SHELTON, M.D. (OSP), DR. VARGO (OSP),
DR. DEGNER (OSP), JANE DOE #7 (OSP),
JANE DOE #8 (OSP), MR. JONES (SRCI),
TRAVIS J. HAYS (OSP), SGT. FREEMAN
(OSP), SGT. HARRIS (OSP), JASON HANSEN
(OSP), SGT. HAZEN (SRCI), LT. PARKER-
KENT (OSP), SHAWN ELLIOT (ODOC), JEFF
PREMO (OSP), MICHAEL PUERINI, OREGON
DEPARTMENT OF CORRECTIONS (ODOC),
ELIZABETH SAZIE (ODOC), BEV SMITH
(ODOC), ROBERT SNIDER (ODOC),

Defendants.

Case No. 6:11-cv-06420-HZ

NOTICE OF SETTLEMENT

Pursuant to ORS 17.095, the State notifies the court that this action has been settled pursuant to the terms of a Settlement Agreement and Release, a copy of which is attached as Exhibit 1.

DATED July 18, 2016.

Respectfully submitted,

ELLEN F. ROSENBLUM
Attorney General

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Hazen, Jones, Nooth, Palmer, Parker-Kent;
Payne, Premo, Puerini, Randall, Sazie,
Shelton, Smith, Snider, Vargo

SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS

This action is currently pending in United States District Court, Case No. 6:11-CV-06420-HZ; Case No. 2:14-CV-02057-AC; and Case No. 6:14-CV-0525-AC. The parties to this Action are Plaintiff Shawn Michael Martin (hereinafter "Plaintiff"), *pro se* in Case No. 2:14-CV-02057-AC and Case No. 6:14-CV-0525-AC, and represented by attorney Mark Passannante in Case No. 6:11-CV-06420-HZ, and Defendants DEGNER, DEWSNUP, ELLIOT, FREEMAN, GULICK, HANSEN, HAYS, HAZEN, JONES, PALMER, PARKER KENT; PAYNE, PREMO, PUERINI, RANDALL, SAZIE, SHELTON, SMITH, SNIDER AND VARGO; Oregon Department of Corrections, Leslie Cone, Mark Dayton, Michael Gower, Travis Graybill, Garth Gulick, George Kautz, Jeffrey Lande, Mark Nooth, Jamie Parks, Michael Payne and Alfredo Ponce; Bennett, Bristol, Brown, Clayton, Coffey, Contreras, Gilmore, Graybill, Gruenwald, Gulick, Hanson, Henry, Hillmick, Ingersoll, Jennings, Jones, Lande, Litano, McMillen, Munk, Nooth, Payne, Pena, Ransier, Rochester, Shelton, Shook, Taylor, Thurmond, Townes, and Wettlaufer represented by AAG Vanessa A. Nordyke ("Parties"). The Parties have agreed to settle all three aforementioned cases: Case No. 6:11-CV-06420-HZ; Case No. 2:14-CV-02057-AC; and Case No. 6:14-CV-0525-AC for the consideration set forth in this Settlement Agreement and Release of Claims ("Agreement"). The effective date of this Agreement is the date on which it is fully executed.

The terms of this Agreement are as follows:

Settlement Payment: As consideration for this Agreement, the State of Oregon, on behalf of the defendants, shall pay plaintiff the sum of Ten Thousand Dollars (\$10,000). ("settlement payment").

Waiver of ODOC Debt: As consideration for this Agreement, the State of Oregon, on behalf of the defendants, shall waive plaintiff's outstanding, unpaid debt from his past incarceration at the Oregon Department of Corrections ("hereinafter referred to as "fines") in the total amount of \$10,732.32.

Personal Injury: The parties agree the cash compensation and waiver of fines is attributable to and in consideration for personal injuries as alleged by plaintiff in the actions.

Plaintiff's Release of Claims: In consideration for the above settlement payment, plaintiff, individually and on behalf of any heirs, executors, administrators, successors, agents, and assigns agrees to release, acquit, and forever discharge defendants and all those in interest with them, including the State of Oregon and all of its political subdivisions, agencies, departments, administrators, officers, current and former employees, agents, attorneys, and insurers (collectively "Released Parties"), from any and all claims, demands, or causes of action, whether known or unknown, under any legal, equitable, or other theory, that exist or may exist against the Released Parties through the date of his release from the custody of the Oregon Department of Corrections on July 20, 2015.

The release, acquittal, and discharge described above ("Release") includes any claims against the Released Parties – including the Oregon Department of Justice and the Oregon Department of Administrative Services/Risk Management Division ("Risk") – arising from the negotiation or execution of this Agreement. This Release also includes any damages (including past and future medical and mental health expenses, lost wages, impairment of earnings, emotional distress, pain and suffering, punitive damages, and any other compensatory, economic, noneconomic, nominal, or other forms of damage) and equitable relief (including injunctions or declaratory judgments), whether known or unknown, or which may develop after the effective date of this Agreement, and including any and all expenses (attorney's fees, costs, and disbursements).

Newly-discovered Evidence: The Parties agree that if, after the Effective Date of this agreement, they discover evidence different from or in addition to the evidence which they now know of or possess, this Release remains in full force and effect.

Binding: This Agreement shall be binding upon the Parties, and their heirs, representatives, executors, administrators, successors in interest, insurers and assigns.

Each Party is Responsible for Own Attorneys' Fees and Costs: The Parties acknowledge and agree that they are solely responsible for paying any attorneys' fees and costs they incurred and that neither the Parties nor their attorneys will seek any award of attorneys' fees or costs from the other Party.

Plaintiff is Responsible for all Subrogation and Liens: Plaintiff acknowledges that all subrogation and lien claims arising out of contract or under state or federal law—including, but not limited to, subrogation or lien claims of or related to health care providers, insurance carriers (including personal injury protection or "PIP"), workers' compensation carriers, attorneys, and any federal or state agency or programs such as Medicare, Medicaid, or Social Security—are the sole and separate obligation of plaintiff which plaintiff agrees to pay or otherwise resolve. Plaintiff will defend, indemnify and hold harmless the Released Parties from and against all such lien and subrogation claims brought against the Released Parties.

Medicare Disclaimer and Waiver: By his signature below, plaintiff declares under penalty of perjury under the laws of the State of Oregon, that: (1) plaintiff is not currently entitled to Medicare for the injuries allegedly suffered in the Action; and (2) none of the treatment received for the injury or injuries claimed in this Action (or related to the incident giving rise to this Action) or released in this Agreement were submitted to or paid for by Medicare. Plaintiff waives, releases, and forever discharges Released Parties from any obligations for any claim, known or unknown, arising out of the failure of Released Parties to provide for a primary payment or appropriate reimbursement to Medicare pursuant to 42 U.S.C. § 1395y(b)(3)(A), and plaintiff shall defend, indemnify and hold harmless the Released Parties for any claims arising out of arising out of 42 U.S.C. § 1395y(b). Plaintiff further understands this settlement may impact, limit or preclude plaintiff's right or ability to receive future Medicare benefits arising out of the injuries alleged in this lawsuit.

No Tax Representations: No party warrants or represents how the United States Internal Revenue Service ("IRS"), the Oregon Department of Revenue, or other governmental

authority will treat the settlement payment for tax purposes, and agree that no further payment of money from Released Parties will be due in the event that the payments or the release of the claims embodied in this Agreement or any portion thereof is found by the IRS, the Oregon Department of Revenue, or other governmental authority to be, or result in, taxable income to any party. *The State of Oregon, as part of its reporting requirements, may have to communicate with the IRS, including submitting IRS form 1099. The State of Oregon reserves the right to respond to inquiries by said authorities and to make any additional disclosures requested by the governmental authority or as required by law. Plaintiff is solely responsible for the tax consequences of settlement payment, and plaintiff agrees not to hold the Released Parties responsible for taxes due.*

Entire Agreement: This Agreement contains and constitutes the entire agreement and understanding of the Parties, notwithstanding any and all prior negotiations, discussions, undertakings or agreements made in arriving at this Agreement. There are no representations, agreements, or inducements between the Parties except as set forth expressly and specifically in this Agreement.

No Admission of Fault: The Parties agree that this Agreement and Release is not to be construed as an admission or proof of any liability or fault whatsoever on the part of the Released Parties.

No Future Precedent: This Agreement does not establish a precedent in the settlement of any current or future grievance, claim of unfair labor practice, or other dispute among the Parties, and shall not be admissible as evidence in any future arbitration, administrative or court proceeding except in a proceeding brought to enforce the terms of this Agreement. In the event plaintiff pursues a claim waived or released pursuant to this Agreement, the Released Parties may plead this Agreement as an absolute defense.

No Waiver: The failure by any of the Parties to enforce at any time, or for any period of time, any one or more of the terms or conditions of this Agreement or a course of dealing

between the Parties, shall not be a waiver of such terms or conditions or of such Party's right thereafter to enforce each and every term and condition of this Agreement.

Invalidity: This Agreement does not operate to waive any right that may not legally be waived. If any provision contained in this Agreement shall for any reason be held to be invalid, illegal, void, or unenforceable in any respect, such provision shall be deemed modified so as to constitute a provision conforming as nearly as possible to such invalid, illegal, void, or unenforceable provision while still remaining valid and enforceable, and the remaining terms or provisions contained herein shall not be affected.

Plaintiff's Knowledge and Understanding: As evidenced by his signature below, plaintiff declares that he has read this Release and that it is fully understood and voluntarily accepted by him. As evidenced by his signature below, plaintiff declares that he has relied on his own judgment in making this settlement, and not on any representations made by the Released Parties, defense counsel, or Risk.

Judgment of Dismissal with Prejudice: The Parties agree to a dismissal of the pending Actions (Case No. 6:11-CV-06420-HZ; Case No. 2:14-CV-02057-AC; and Case No. 6:14-CV-0525-AC) with prejudice, without costs or fees to either party. Counsel for defendants shall file a Stipulated General Judgment of Dismissal with Prejudice in each case, which both Parties or their counsel will sign.

Further Assurances: The Parties agree to execute any further documents and take any further actions, as may be reasonable and necessary in order to carry out the purpose and intent of this Agreement. Promptly after the closing of the Settlement, the attorneys on behalf of each of the Parties shall file or cause to file an executed Stipulation of Dismissal with Prejudice of the Lawsuit.

Ownership of Claims: The Parties represent that they have not transferred or assigned, or purported to transfer or assign, to any person or entity, any claim, or any portion of interest therein, related in any way to the other.

Waiver of Rule of Construction Against Drafter: This Agreement was jointly drafted and approved by all Parties to this Agreement. Any rule that would otherwise require any ambiguities in this Agreement to be interpreted against the drafter(s) is hereby expressly waived.

Counterparts: This Agreement may be executed in counterparts, including counterparts received by facsimile or electronic transmission, with each counterpart constituting an original. The executing Parties agree that a photocopy or other signed copy of this Agreement is as effective as the original.

IT IS SO AGREED TO BY THE PARTIES:



SHAWN MICHAEL MARTIN
Plaintiff

DATED this 10th day of July, 2016.



AAG VANESSA A. NORDYKE
On Behalf of the Released Parties

DATED this 18 day of July, 2016.

APPROVED AS TO FORM:



MARK PASSANNANTE
Attorney for Plaintiff in Case No. 6420

DATED this 11th day of July, 2016.